

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7718 OF 2005

Mandlik Jayantilal Jhaveri

...Petitioner

V/s.

Parag Rajnikant Parikh & Anr.

...Respondents

Shri. P.S. Dajni i/b. Ms. Bilawala & Co. for the Petitioner.

None for Respondent.

CORAM : V.M. KANADE, J.

DATED : 8th MARCH, 2007.

P.C. :-

1. Heard learned counsel for the Petitioner.
2. The Petitioner is challenging the order passed by Division Bench of Small Causes Court whereby appeal filed by the Petitioner herein challenging the order passed by the Trial Court, rejecting his application for interim injunction was dismissed.
3. Brief facts are that the Petitioner and the Respondents are related. Petitioner is original plaintiff and Respondent No.2 is his real brother and the Respondent No.1 is landlord of the building. Initially mother of the Petitioner and Respondent No.2 was a tenant of the first floor premises situated at Victor Villa, 5, Babulnath Road, Mumbai-400

007. Initially mother expired and thereafter father expired sometimes in January 2002. It is submitted by the Petitioner that the Petitioner and the Respondent No.2 are heirs and legal representatives and both are residing in the suit premises and therefore, both are tenants of suit premises by virtue of Section 5(ii)C of the Bombay Rent Act. There was some dispute in between family members of the Petitioner and the family members of Respondent No.2. The Petitioner, therefore, filed suit seeking declaration that the Petitioner as well as the Respondent No.2 were joint tenants in respect of suit premises and also sought order of injunction restraining Respondent No.2 and his family members from using common areas of the said premises for commercial purpose and for similar other relief. The application for injunction was rejected by the Trial Court by order dated 30th October, 2003. The appellate court confirmed the said order.

4. The learned counsel for the Petitioner submitted that Lower Appellate Court has erred in rejecting said application. It is submitted that only injunction which was sought by the Petitioner was in respect of use of common areas for the purpose other than residential purpose. He submitted that daughter-in-law of the Respondent No.2 was using the

premises for the purpose of commercial use and therefore, it was essential to pass an order restraining family members of the Respondent No.2 from using hall, drawing room and other areas which were in common use by both the families for making commercial use. He invited my attention to the order passed by the Trial Court and also Lower Appellate Court.

5. In my view, there is no infirmity to set aside the order. Both the Lower Courts have considered legal position in respect of grant of order of injunction. In such case, in my view, there is no case made out for interfering with the said order while exercising writ jurisdiction under Article 227 of the Constitution of India.

6. It is clarified that the Trial Court shall not be influenced by any observation made by the Appellate Court while deciding the appeal. The Trial Court shall decide the suit in any case expeditiously on merits and in accordance with law within one year. All contentions of the parties are kept open. Hearing of the suit is expedited.

. Writ Petition is accordingly rejected.

V.M. KANADE, J.

